

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | | |
|------------------------|---|-------------------------|
| IN RE: | : | CHAPTER 7 |
| | : | |
| BOOKS UNLIMITED, LLC, | : | CASE NO. 19-66545 - LRC |
| | : | |
| ----- DEBTOR. | : | |
| | : | |
| NANCY J. GARGULA, | : | |
| UNITED STATES TRUSTEE, | : | |
| | : | |
| MOVANT, | : | |
| vs. | : | CONTESTED MATTER |
| | : | |
| BOOKS UNLIMITED, LLC, | : | |
| | : | |
| RESPONDENT. | : | |

**NOTICE OF HEARING ON UNITED STATES TRUSTEE'S
MOTION TO DISMISS CASE WITH MINIMUM FIVE YEAR BAR TO REFILING**

PLEASE TAKE NOTICE that the United States Trustee has filed a motion requesting that the above-referenced case be dismissed with a minimum five year bar to refiling.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the United States Trustee's motion in **Courtroom 1204**, United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia at **10:15 a.m. on November 21, 2019**.

Your rights may be affected by the court's ruling on this motion. You should read this motion carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in this motion or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the motion with the Clerk at the address stated below, but you are not required to do so. If you file a written

response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

Dated: October 17, 2019

NANCY J. GARGULA
UNITED STATES TRUSTEE
REGION 21

By: _____ /s/
Lindsay P. S. Kolba
Georgia Bar No. 541621
United States Department of Justice
Office of the United States Trustee
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75 Ted Turner Drive SW
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**MOTION TO DISMISS CASE
WITH MINIMUM FIVE YEAR BAR TO REFILING**

COMES NOW Nancy J. Gargula, United States Trustee for Region 21, in furtherance of the administrative responsibilities imposed by 28 U.S.C. § 586(a), and respectfully moves this Court to enter an order dismissing the above-captioned Chapter 11 case for cause pursuant to 11 U.S.C. § 1112(b). The United States Trustee contends that Books Unlimited, LLC (the “Debtor”) has failed to come before this Court for a proper purpose and has engaged in a series of abusive filings. As a result, Debtor should be ineligible to file another bankruptcy proceeding for a period of at least five (5) years. In support of this motion, the United States Trustee shows the Court as follows:

1. This case was commenced October 16, 2019, by the filing on Debtor’s behalf of a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Petition”).
2. The Petition was signed by Rodney Daniel as Owner of Debtor.

3. It appears on the face of the petition that Debtor is an artificial entity and that it is not represented by an attorney.

4. Because Debtor is an artificial entity, it cannot represent itself in this proceeding, nor may its officers appear before this court on its behalf unless they are licensed attorneys. *See Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985); *National Indep. Theatre Exhibitors, Inc. v. Buena Vista Distrib. Co.*, 748 F.2d 602, 609 (11th Cir. 1984).

5. The United States Trustee believes that this case is at least the twenty-second case filed by the Debtor, or one of its affiliates, since May 2011. In each of these cases, the Debtor made no meaningful attempt to prosecute the cases.

6. The cases filed, and the history of the bankruptcy proceedings are as follows:

| Case No. | Case Name | Date of Filing | Date of Dismissal | Reason for Dismissal |
|----------|---|----------------|-------------------|---|
| 11-64375 | Monique Shantae Hall | 05/12/2011 | 07/01/2011 | Failure to comply with 11 U.S.C. § 109(h) and 11 U.S.C. § 521 |
| 11-70091 | Monique Shantae Hall | 07/08/2011 | 09/29/2011 | Failure to fund plan |
| 11-83433 | Monique S. Hall | 11/22/2011 | 01/11/2012 | Failure to file creditor matrix |
| 13-65998 | Monique Hall | 07/25/2013 | 08/16/2013 | Failure to correct filing deficiency |
| 13-74755 | Rodney A. Daniel | 11/12/2013 | 12/02/2013 | Failure to pay filing fee |
| 13-76427 | Monique S. Hall | 12/05/2013 | 12/26/2013 | Failure to pay filing fee |
| 13-76429 | Rodney Daniel | 12/05/2013 | 01/06/2014 | Failure to correct filing deficiency |
| 14-56706 | Rodney Daniel | 04/01/2014 | 04/17/2014 | Failure to pay filing fee |
| 17-52446 | MBP Publications, LLC | 02/07/2017 | 03/31/2017 | Cause under 11 U.S.C. 707(a) |
| 17-57314 | Monique Shantae Hall | 04/24/2017 | 05/26/2017 | Failure to correct filing deficiency |
| 17-60075 | Monique Shantae Hall aka MBP Publication | 06/06/2017 | 06/23/2017 | Failure to file list of creditors |
| 17-60408 | MBP Publications, LLC | 06/13/2017 | 07/13/2017 | Cause, with 180 day bar to refiling |

| Case No. | Case Name | Date of Filing | Date of Dismissal | Reason for Dismissal |
|----------|---|----------------|-------------------|--|
| 18-50873 | MBP Publications | 01/19/2018 | 02/07/2018 | Cause, with 180 day bar to refiling |
| 18-55238 | Rodney A. Daniel and Monique S. Hall <i>dba</i> MBP Publication, LLC | 03/28/2018 | 04/13/2018 | Failure to pay filing fee |
| 18-57840 | Rodney Daniel <i>dba</i> MBP Publications | 05/08/2018 | 06/04/2018 | Failure to correct filing deficiency |
| 18-65723 | Book Boutique | 09/19/2018 | 11/13/2018 | Failure to obtain counsel |
| 18-69193 | Book Boutique | 11/14/2018 | 12/28/2018 | Failure to obtain counsel, barred from filing for period of six months |
| 18-71234 | Monique Shantae Hall <i>dba</i> Book Boutique | 12/19/2018 | 01/15/2019 | Failure to correct filing deficiency |
| 19-52395 | Monique Shantae Hall <i>dba</i> Book Boutique | 02/12/2019 | 03/12/2019 | Failure to correct filing deficiency |
| 19-54254 | Rodney Daniel <i>dba</i> Book Boutique | 03/18/2019 | 04/01/2019 | Failure to file list of creditors |
| 19-60064 | Monique S. Hall <i>dba</i> Book Boutique <i>dba</i> Lil Britchez | 06/28/2019 | 09/25/2019 | Cause, with five year bar to refiling |
| 19-66517 | Book Boutique/Lil Britchez, LLC | 10/15/2019 | Pending | |
| 19-66545 | Books Unlimited, LLC | 10/16/2019 | Pending | |

7. Upon information and belief, in the instant case (19-66545) Debtor has failed to file required schedules and statements or a list of creditors.

8. The Debtor's actions demonstrate a scheme to abuse the bankruptcy process. *See Highway 54 Property, LLC v. Boulware-Manigault (In re Boulware-Manigault)*, Case No. 07-67308, 2007 Bankr. LEXIS 2158 (Bankr. N.D. Ga. May 25, 2007) (eight personal cases and single

corporate case, which were dismissed for failure to pay fees and other procedural neglect, demonstrated a scheme to abuse the Bankruptcy Code).

9. The Debtor has repeatedly failed to come before the Court in an honest and truthful manner. The United States Trustee believes the Debtor filed its cases without the intention of prosecuting said cases. The Debtor appears to file cases in order to invoke the automatic stay and then purposefully fails to pay filing fees or file required documents and allows the cases to be dismissed.

10. Dismissal *with prejudice* is an appropriate remedy for the Debtor's continuing failure to comply with mandatory obligations under the Bankruptcy Code. *See In re Herrera*, 194 B.R. 178 (Bankr. N.D. Ill. 1996); *In re Norton*, 319 B.R. 671 (Bankr. D. Utah 2005); *In re Smart*, 212 B.R. 419 (Bankr. S.D. Ga. 1997).

11. The Court has the discretion to dismiss a case with prejudice when the Court finds sufficient cause. *See* 11 U.S.C. § 349(a). Cause can be found when a debtor engages in "egregious behavior that constitutes bad faith and prejudices creditors." *In re Leavitt*, 209 B.R. 935, 939 (9th Cir. BAP 1997).

12. In this case, the Debtor's conduct constitutes bad faith and the conduct in this case has served to prejudice creditors. *See In re Tomlin*, 105 F.3d 933, 937 (4th Cir. 1997) (noting that concealing information from the court constitutes egregious behavior that constitutes bad faith and prejudices creditors).

13. The basis for a five-year bar to filing any case under title 11 arises when a debtor has filed multiple petitions which were subsequently dismissed when the debtor failed to meet his statutory obligations. *Unifund v. Hughes (In re Hughes)*, Case No. 04-98206, 2007 Bankr. LEXIS 2156, *3 (Bankr. N.D. Ga. May 31, 2007).

14. As noted by the Second Circuit Court of Appeals, an extended prohibition on refiling under 11 U.S.C. § 105(a) is one of several tools, in addition to §§ 109(g) and 349(a), available to bankruptcy courts to control the pervasive problem of serial filers. *Casse v. Key Bank Nat'l Ass'n (In re Casse)*, 198 F.3d 327, 341 (2d Cir. 1999).

15. The United States Trustee submits that the record in this case and in the Debtor's prior and related cases demonstrates abuse of the Bankruptcy Code. Debtor has not come before this Court in proper prosecution of the instant case or in any one of the other cases previously filed in this Court.

WHEREFORE, the United States Trustee respectfully requests that this Court dismiss this case and prohibit the Debtor from filing a petition for relief under the Bankruptcy Code for a period of five (5) years from the date of entry of the order.

NANCY J. GARGULA
UNITED STATES TRUSTEE
REGION 21

By: _____ /s/
Lindsay P. S. Kolba
Georgia Bar No. 541621
United States Department of Justice
Office of the United States Trustee
362 Richard Russell Building
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(404) 331-4437
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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing *Motion to Dismiss Case with Minimum Five Year Bar to Refiling* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following party who has appeared in this case under the Bankruptcy Court's Electronic Case Filing program:

I further certify that on this day, I caused a copy of this document to be served via United States First Class Mail, with adequate postage prepaid on the following parties at the address shown for each.

Books Unlimited, LLC
#103-106
7105 Stonecrest Pkwy
Lithonia, GA 30038

/s/

Lindsay P. S. Kolba
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